

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)

Trump Old Post Office, LLC, t/a)

Trump International Hotel Washington DC)

Application to Renew a)

Retailer's Class CH License)

at premises)

1100 Pennsylvania Avenue, N.W.)

Washington, D.C. 20004)

Case No.: 19-PRO-00036

License No: ABRA-100648

Order No: 2019-467

BEFORE: Donovan Anderson, Chairperson
Mike Silverstein, Member
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member

ALSO PRESENT: Trump Old Post Office, LLC, t/a Trump International Hotel Washington
DC, Applicant

Stephen J. O'Brien, Counsel, on behalf of the Applicant

Joshua A. Levy, Counsel, on behalf of A Group of Five or More Residents
or Property Owners, Protestants

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**ORDER DENYING MOTION TO DISMISS, GRANTING PARTIAL SUMMARY
JUDGEMENT, STAYING RELEASE OF INFORMATION, AND HOLDING
PROCEEDINGS IN ABEYANCE**

This matter stems from the Application to Renew a Retailer's Class CH (Hotel) License, which was submitted to the Alcoholic Beverage Control Board by the Trump Old Post Office, LLC, t/a Trump International Hotel Washington DC (hereinafter "Applicant"). A Notice of Public Hearing advertising the renewal application was posted on March 29, 2019, and informed the public that any objections to the application could be filed on or before May 13, 2019. *ABRA Protest File No. 19-PRO-00036*, Notice of Public Hearing [*Notice of Public Hearing*].

The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that one group of at least five residents and property owners (Group) has filed a protest against the application. *ABRA Protest File No. 19-PRO-00036*, Roll Call Hearing Results. The Group challenges the renewal of the Applicant's hotel license based on their allegation that President Donald J. Trump, an individual owner of at least one of the entities listed on the hotel's liquor license, lacks "good character" in accordance with D.C. Official Code § 25-301(a), which is a requirement to qualify for renewal of the license. *Group Exhibit No. 1*, at 2-3.

In response, the Applicant filed a motion and reply requesting that the Board dismiss the Group. The Applicant argues that the Group should not be recognized as a protestant and dismissed under 23 DCMR § 1602.2, because the Group has failed to file an objection under one of the recognized appropriateness grounds, which does not include the character of the ownership. *Mot. to Dismiss*, at 1. The Applicant also argues that the Group has failed to challenge the licensee's character and fitness, and that challenging the character and fitness of the President as an individual owner, and not that of the limited liability company is insufficient. *Applicant's Reply*, at 2. The Applicant further argues in a footnote that the petition lacked the required signatures and addresses of the individual members of the Group required by 23 DCMR § 1602.3. *Mot. to Dismiss* at 2 n.2. Finally, the Applicant argues that the addresses of the individual Group members should not be withheld by the agency. *Id.*

In its opposition and sur-reply, which were considered by the Board, the Group argues that its protest raises a cognizable protest issue under D.C. Official Code §§ 25-301(a) and 25-315, and that this is supported by case law. *Group's Opposition*, at 1-2, 5 [*Opposition*].¹ The Group further notes that its filing includes allegations of inappropriate behavior and statements. *Opposition*, at 1-2. It argues that these allegations are sufficient to allege a negative impact on peace, order, and quiet, and pedestrian safety in accordance with D.C. Official Code § 25-313.

Based upon the Board's review of the motions, the Board denies the Applicant's motion to dismiss; orders the release of the individual Group members' addresses to the Applicant and stays further proceedings until the information is provided to the Applicant; and grants partial summary judgement in favor of the Applicant on the issue of appropriateness. The Board emphasizes that these orders are solely procedural, and do not constitute a determination on the merits of the issues raised by the Group. The Board's reasoning and order is provided below.

¹ The Group also argues that § 25-315 authorizes a character challenge, but the Board does not address this specific claim because the Board deems the authorization to raise a claim under § 25-301(a) as authorized by D.C. Official Code § 25-602. *Group's Opposition*, at 2. Nevertheless, the Board notes that the section's absence from § 1602.2 is further evidence that that regulation was never enacted with the intent of dismissing protests that fail to raise appropriateness issues.

I. D.C. Official Code § 25-602(a) Allows the Group to Protest the Application Based Solely on Objections to the Character and Fitness of the Individual Owners of the Hotel.

The Board disagrees with the Applicant's argument that the Group is barred from solely objecting to the renewal of the license based on the Group's allegations that the ownership fails to satisfy D.C. Official Code § 25-301(a) or otherwise lacks sufficient character and fitness to hold the license.

In order to renew a Retailer's Class CH License, the Applicant is obligated to demonstrate to the satisfaction of the Board that the ownership "is of good character and generally fit for the responsibilities of licensure" and the Application complies with Title 25 of the D.C. Official Code. D.C. Code § 25-301(a)(1), (7). Under § 25-602, "Any person objecting, under § 25-601, to the approval of an application shall notify the Board in writing of his or her intention to object and the grounds for the objection within the protest period." D.C. Code § 25-602. Section 1602.2 states that "All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title." 23 DCMR § 1602.2 (West Supp. 2019).

The Board does not interpret § 1602.2 as limiting the range of protestable issues for several reasons. *See Mot. to Dismiss*, at 2. First, the plain language of § 25-602 does not limit objections to the appropriateness factors or otherwise reference D.C. Official Code §§ 25-313 through 25-315. In light of the broad language used by § 25-602, the Board cannot by regulation or interpretation add restrictions to the statute that shrink its scope. *Citizens for Responsibility & Ethics in Washington, v. Fed. Election Comm'n*, 243 F. Supp. 3d 91, 101 (D.D.C. 2017) (saying a plaintiff may challenge a "regulation" that "conflicts with the statute from which it derives."). Second, § 1602.2 does not provide any penalty for failing to state an appropriateness ground; as a result, nothing mandates that the Board dismiss a protest for failing to raise an appropriateness issue when it raises other issues that may bar the issuance or renewal of a license. Third, multiple judicial opinions have recognized the right of protestants to raise character and fitness issues. *Citizens Ass'n of Georgetown, Inc. v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 288 A.2d 666, 669 (D.C. 1972) ("participants in the proceeding must have an opportunity to address themselves to [character and fitness] evidence"); *Craig v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) (acknowledging that protestants may make a "character challenge."). Fourth, the Applicant's interpretation contradicts the intent of the legislature, which considered character challenges a fundamental part of the District's alcohol laws.² Fifth, the Board has a long standing practice of permitting protestants to pursue

² 1 Legislative History of the District of Columbia Beverage Control Act at 79 ("We feel that people who live in a neighborhood should be the judge of whether or not they want licenses to be issued in that locality, and [while] a man might be able to slip through . . . if you . . . [give protestants an] opportunity to be heard before the license is granted, it seems to me that you have an excellent check upon the character of the individual . . .") (emphasis added), 80 (Corporate Counsel Bride stated, ". . . this business is charged with [the] public interest and . . . the people ought to be fully informed as to the character of the man . . ."); 276 (Rep. Black describing the policy of the repeal of prohibition as making the traffic in liquor ". . . legal and licensed, so that everybody in the community could know who was in the traffic, [and] what their characters were . . .").

character challenges if timely raised even if there are no contested appropriateness issues.³ Finally, the Applicant's interpretations would lead to absurd and bizarre results if the Board limited character challenges to only those times when protestants bundled them with appropriateness challenges. Indeed, the Applicant's novel interpretation would block objections from otherwise obviously deficient or unlawful applications (e.g., issuance of a license in a moratorium zone or to a felon) and encourage parties to add fake objections to their protests.

The Board further rejects the Applicant's argument that the protest should be dismissed because the Group only challenges the character and fitness of the President, one of the individual owners of the entities holding the license, and not the character and fitness of any of the entities appearing on the license. *Applicant's Reply*, at 2. Consistent with the Board's determination in *Melles Hospitality*, the Board has consistently held that "the mere creation of a corporate entity does not shield the individuals holding an interest in a corporation or limited liability company from having their records as owners scrutinized by the Board." *In re Melles Hospitality Group, LLC, t/a The Alibi Restaurant & Lounge*, ABRA License No. 93491, Board Order No. 2014-067, 3 (D.C.A.B.C.B. Apr. 9, 2014). This means that all of the owners of the entities holding the license, in their capacity as individuals, must satisfy the requirements of § 25-301(a). *Id.* at 3-6.

Therefore, for these reasons, the Applicant's motion to dismiss is denied.

II. The Board Orders ABRA to Release the Individual Group Members' Addresses to the Applicant in Order to Comply with 23 DCMR § 1801.6.

The Applicant has further informed the Board that the agency has withheld the addresses of the individual Group members. *Mot. to Dismiss*, at 2 n. 2. The Board notes that § 1801.6 requires that the "Board . . . permit any party to a protested case to challenge the validity of signatures on Protest Petitions submitted by the opposing party." 23 DCMR § 1801.6 (West Supp. 2019). In the context of a protest by a group, § 25-601 requires "A group of no fewer than 5 residents or property owners of the District" to be members in accordance with § 25-601(2). D.C. Code § 25-601(2).

The Board has reviewed email messages asking the agency to protect the Group members' addresses from disclosure "to the press or public" in accordance with the D.C. Freedom of Information Act. *Email from Joshua A. Levy to ABRA*, (May 13, 2019) (8:42 AM). Nevertheless, the other side in litigation does not constitute the "press or public," and the Applicant is entitled to the Group members' addresses in order to challenge the validity of the petition in accordance with § 1801.6. The Board further notes that the addresses are material to such a challenge because the statute limits membership in a group to D.C. residents and property owners. As a result, the Applicant is entitled to the addresses included with the protest petition so that the Applicant has a fair opportunity to challenge the validity of the petition.

³ *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, Board Order No. 2016-020, 2 (D.C.A.B.C.B. Jan. 13, 2016 (saying the Board granted intervenor status to abutting property owners after the Board initiated its own challenge under § 25-301(a) "because they timely raised non-appropriateness issues when they filed their initial protest.") [*Alibi Notice*]).

Nevertheless, because the release of information cannot be reversed, and the issue relates to the standing of the Group, the Board will stay this portion of the order and further proceedings in this matter pending the conclusion of the reconsideration period and any other appeals process the Group may wish to pursue.

III. The Protest Petition Filed by the Group Complies with 23 DCMR § 1602.3.

The Board further addresses claims that the protest petition fails to comply with § 1602.3. Under § 1602.3, “All protests shall be signed by the protestant and contain the protestant’s full name, e-mail address, if any, and mailing address.” 23 DCMR § 1602.3 (West Supp. 2019).

As part of the protest petition the Group’s counsel submitted a letter indicating the Group’s intent to protest the renewal. *Letter from Joshua A. Levy to the Alcoholic Beverage Control Board*, 1 (May 8, 2019) [*Protest Letter*]. Attached to the letter was a prior submission requesting a show cause action that was signed by the Group members. *Group Exhibit No. I*, 27 (Complaint to Show Cause). The protest letter submitted by the Group’s counsel also referenced the exhibit containing the signature page. *Protest Letter*, at 1 (May 8, 2019). The Group then submitted the addresses of the individual Group members in a separate document. *Names and Addresses of the DC Resident Complainants/Protestors (Group Exhibit No. I)*.

In this case, all of the required elements of a valid protest petition are contained within the letter and attached exhibits, including the stated grounds, signatures, and addresses. The Board further notes that § 1602 does not contain any time limit on the validity of the signatures or any mandatory penalties for failing to comply. Moreover, the Board has no reason to doubt the intent of the signatories to protest the renewal application or that the Group’s counsel is authorized to act on their behalf. The Board further notes that the Group’s counsel attempted to determine whether the included signatures were appropriate, and was informed by agency staff that they were, before the end of the protest deadline. *Group’s Opposition*, at 2 n.1.⁴ As a result, dismissing the protest petition because the signatures are not part of the protest letter cover sheet would merely elevate form over substance.

Therefore, at this time, the Board does not deem the petition noncompliant with § 1602.3. The Board emphasizes that in light of the eventual release of the addresses to the Applicant, the Board does not foreclose revisiting this ruling if, in the future, the Applicant challenges the petition under § 1801.6 on any previously unraised grounds.

IV. The Board Grants Partial Summary Judgement in Favor of the Applicant on the Issue of Appropriateness.

While the Board denies the Applicant’s motion to dismiss, the Board grants partial summary judgment in favor of the Applicant on the issue of appropriateness.

⁴ Even if a defect in the petition is shown, nothing prevents the Group from requesting the waiver of the requirements of Chapter 16 for “good cause and in the interest of justice or to prevent hardship.” 23 DCMR § 1600.2 (West Supp. 2019). Nevertheless, such a waiver request does not appear necessary at this time.

Under § 25-602(a), “Any person objecting, under § 25-601, to the approval of an application shall notify the Board in writing of his or her intention to object and the grounds for the objection within the protest period.” D.C. Code § 25-602(a). The Board has previously interpreted § 25-602(a) as requiring protestants “to [timely] notify the Applicant and the Board of all of the grounds on which they intend to protest the license.” *In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 13-PRO-0005, Board Order No. 2013-293, 17 (D.C.A.B.C.B. Jul. 24, 2013). Moreover, the failure to provide such notice may result in the proponent being prohibited from presenting evidence and the issue deemed uncontested. *Craig*, 721 A.2d at 590 (“Since petitioners did not raise as a contested issue . . . thereby placing the applicant and the Board on notice of such a challenge, we find no error in the Board’s exclusion of evidence which petitioner contends it offered relevant to that issue”). Finally, under § 25-315, if no objection to the appropriateness of the establishment is filed, it is presumed appropriate. D.C. Code § 25-315.

In its initial protest letter and attached exhibits, the Group was clear that it was protesting on the grounds of character and fitness and did not cite any appropriateness factor.⁵ Furthermore, even if the allegations raised by the Group could be used to establish a violation of one or more of the appropriateness factors, no reader would reasonably interpret or infer that the Group’s filing raised any other grounds or harms as a basis for the protest. *In re Giant of Maryland, LLC, t/a Giant #2379*, Case No. 14-PRO-00060, Board Order No. 2014-349 (D.C.A.B.C.B. Sept. 24, 2014) (“a protestant does not have to specifically state any of the statutory factors found in § 25-313, but rather, merely allege negative impacts or harms that fall or may reasonably be interpreted to fall under a specific factor listed in D.C. Official Code §§ 25-313 and 25-314 or 23 DCMR § 400.”). Indeed, nowhere in the protest petition does the Group allege that any of the alleged behavior will cause crime, violence, or accidents in the future. As a result, in accordance with § 25-602(a), the Group has not timely raised any appropriateness issue in its initial protest letter; therefore, the Application shall be presumed to be appropriate in accordance with § 25-315(a).

Therefore, the Board grants summary judgement on the issue of appropriateness, which leaves the character and fitness issue raised by the Group as the sole remaining issue.⁶

ORDER

Therefore, the Board, on this 12th day of June 2019, hereby **DENIES** the Applicant’s motion to dismiss.

⁵ See e.g., *Letter from Joshua A. Levy to the Alcoholic Beverage Control Board*, 1 (May 8, 2019) (“The time is now for the Board to determine whether Mr. Trump is ‘of good character.’”); 1 (“we filed supplemental briefs and exhibits, as further evidence of Mr. Trump’s bad character.”).

⁶ The result in this matter is similar to the Board’s resolution of the *Alibi* matter, where the Board dismissed the appropriateness issues, but granted intervenor status to the abutting property owners and allowed them to participate because the protestants timely raised non-appropriateness issues. *Alibi Notice*, at 2; *In re HRH Services, LLC, t/a The Alibi*, Case No. 15-PRO-00096, 4 (D.C.A.B.C.B. May 18, 2016) (Findings of Fact, Conclusions of Law, and Order).

IT IS FURTHER ORDERED that ABRA shall unredact or otherwise provide the addresses of the individual Group members to the Applicant upon the request of the Applicant. This order does not restrict ABRA from redacting any addresses in any document provided to the press or general public in accordance with the D.C. Freedom of Information Act. This portion of the Order shall be **STAYED** pending the expiration of the motion for reconsideration period and during the pendency and consideration of any appeal filed by the Group in a court of competent jurisdiction. The Board expects that the Group will notify ABRA's General Counsel and the Applicant's counsel as to whether the Group will file a motion for reconsideration or appeal, or whether the Group will waive the opportunity to contest the Board's order.

IT IS FURTHER ORDERED that this matter, including all future hearings, shall be **HELD IN ABEYANCE** until the Applicant is provided with the addresses of the individual Group members.


IT IS FURTHER ORDERED that the Board **GRANTS** partial summary judgement of all outstanding appropriateness issues; therefore, the application shall be presumed to be appropriate in accordance with D.C. Official Code § 25-315(a).


The ABRA shall deliver a copy of this order to the parties.


District of Columbia
Alcoholic Beverage Control Board


Donovan Anderson, Chairperson


Mike Silverstein, Member


James Short, Member


Bobby Cato, Member


Rema Wahabzadah, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).